UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

GAP FARMS, L.L.C. Plaintiff,	) Civil Action No. ____________))
vs.	) Judge: ____________________)
TOWN OF ARCADIA, ARCADIA TOWN COUNCIL, JESSE EUGENE SMITH, JR. MAYOR Defendants,	) Magistrate: ________________))) JURY TRIAL DEMANDED

COMPLAINT FOR
INJUNCTIVE RELIEF AND MONETARY DAMAGES

This Complaint For Injunctive Relief and Monetary Damages, filed for and on behalf of Gap Farms, L.L.C., Plaintiff herein, through undersigned counsel, respectfully shows:

PARTIES

1.

Plaintiffs:

a. Gap Farms, L.L.C. is a limited liability company organized and existing under the laws of the State of Louisiana with its principal office in Mandeville, Louisiana which owns immovable property in Bienville Parish, Louisiana within this district.

Defendants:

a. Town of Arcadia ("Town"), a municipality and political subdivision of the State of Louisiana.

b. Arcadia Town Council ("Council"), the official local governing authority in and for the Town of Arcadia made defendant in its Capacity as the governing body of the Town of Arcadia.

c. Mayor Jesse Eugene Smith, Jr. ("Mayor"), made defendant in his Capacity as Mayor of the Town of Arcadia.

SUBJECT MATTER JURISDICTION

2.

Subject matter jurisdiction is founded on 28 U. S. C. § 1331, 42 U. S. C. § 1983, 42 U. S. C. § 1988, and this court's supplemental jurisdiction under 28 U. S. C. § 1367.

VENUE

3.

Venue is founded on 28 U. S. C. § 1391(d).

INTRODUCTION

There was previously a dispute related to the location of a boundary and the existence of property encumbered by a road servitude between two adjacent land owners in Arcadia, Gap Farms and Kiran of Monroe, LLC ("Kiran"). This action arises out of certain actions taken by the Mayor of Arcadia on behalf of the Town and as authorized by Arcadia Town Council. According to the sworn testimony of the Mayor in the prior matter, he, and he alone, is the permitting authority for the Town of Arcadia. The Mayor has now refused to grant a permit to Gap Farms to erect a fence or barrier on its property. The fence or barrier is necessary to stop continuing and damaging trespass of traffic. It is the arbitrary and capricious actions of the Mayor that have instigated this action as he has acted in manor which has deprived the Plaintiff of rights secured under the Constitution of the United States and has caused injury directly to the Plaintiff.

In 2009, Gap Farms applied for and was granted permission by the Town of Arcadia to construct a road traversing its property. As shown by attached Exhibit "A", the plat for the placement of the road was accepted on December 28, 2009, and was filed into the conveyance records of Bienville Parish on December 29, 2009. The plat and road dedication were approved by the Mayor of the Town of Arcadia.

The property in question is located north of Interstate 20 and adjacent to Louisiana Highway 151. The property in question is located within the boundaries of the Town of Arcadia.

In 2010, Gap Farms, L.L.C. constructed a road that runs parallel to Interstate 20 and which intersected with Louisiana Highway 151. As shown by the attached Exhibit "A" there was a 30 foot road servitude from the center of the road. Outside of the 30 foot road servitude there was also contemplated on the survey a 10 foot utility servitude. Outside of the road servitude, Gap Farms specifically and intentionally left a portion of property unencumbered by the road servitude that would be adjacent to the property located to the north of the Gap Farms property. This property was intentionally left in place to create a buffer between the property and the road servitude.

It has been established and is uncontroverted that there is property that is owned exclusively by Gap Farms located to the north of the boundary of the road servitude that is unencumbered by the road servitude. The only alleged encumbrance on the Gap Farms property adjacent to the Kiran property is a utility servitude. It is this area and the Mayor's insistence that he can control private property that has forced Plaintiff to bring this action.

Recently, a tract of property located to the north of the Gap Farms property has been developed by Kiran into a convenience store and gas station. Sometime in 2015, unbeknownst to Gap Farms, the Mayor acting in his capacity as the chief executive officer of the Town of Arcadia granted a "verbal permit" for Kiran to construct a large concrete driveway across the property of Gap Farms to connect to Gap Farms Road. Significant efforts were undertaken by a trespassing contractor to construct a driveway across the private property owned by Gap Farms without its consent. When Gap Farms objected to this construction, the Mayor then instructed the contractor to fill in the large hole that had been dug in preparation for the creation of the driveway. Employees of the Town of Arcadia also performed work on the property of Gap Farms at the direction of the Mayor.

Based on the dispute, expert surveyors were retained by the various parties and it was ultimately determined that neither the edge of the road nor the road servitude (which lies completely within the boundaries of the Gap Farms tract) overlaps, encroaches, or abuts in any way the property of Kiran to the north. The property of Kiran, as has been established and is uncontroverted, is not adjacent to the road or the road servitude. Despite this fact, the Mayor has continually denied a permit for Gap Farms to erect the fence or to place barriers to stop damaging trespass of traffic of customers of Kiran who are driving over the Plaintiff's property to access nearby Gap Farms Road.

Mayor Eugene Smith has testified in a sworn deposition that he did not dispute any issues related to ownership of the property in question and indicated that with regard to ownership and boundary issues he would defer to the expert surveyors. Both surveyors agreed on the location of the boundary and the existence of property located to the north of the road servitude but south of the property line that is owned entirely by Gap Farms.

Despite acknowledge that he knows Gap Farms, and only Gap Farms, owns the property the Mayor still refuses to allow Gap Farms to erect a fence or barrier to stop trespassing traffic and has put Gap Farms on notice that any fence or barrier that Gap Farms places on its own property will be removed by the Town. See attached hereto Exhibit "B", January 22, 2017 letter from the attorney for the Town of Arcadia.

4.

The Town, the Council, and the Mayor have significantly impeded Gap Farm's ability to use its own property.

5.

Neither the Town of Arcadia nor the Arcadia Town Council have initiated any expropriation of the private property of Gap Farms but has granted a right of use across the private property of Gap Farms without any compensation. The improper taking of this property is without due process and arbitrary.

COUNT 1: SUBSTANTIVE DUE PROCESS VIOLATION UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

6.

This action is brought under 42 U. S. C. § 1983 and 42 U. S. C. § 1988 alleging the deprivation of Plaintiff's rights secured by the Constitution of the United States due to actions of Defendants that have caused direct injury to Plaintiff, entitling Plaintiff to injunctive relief; and the Plaintiff is entitled to monetary relief as will be shown at trial.

7.

Defendants' abuse of the permitting process, including the unconstitutional granting of a permit to build to a non-owner as well as the withholding and/or of permit issuance for Gap Farms to erect a fence or barrier violates the guarantee of due process of the Fourteenth Amendment of the Constitution of the United States, as alleged herein.

8.

The foregoing actions of the Town, the Council, and the Mayor deprive Plaintiff of constitutional rights as set forth herein.

9.

Defendants have taken affirmative and abusive actions that have denied the Plaintiff the ability to protect its property. The Defendants' actions have affected Plaintiff's property rights under Louisiana law.

10.

Defendants have taken Plaintiff's property and allowed its use by adjacent property owner.

11.

The Town, through the Mayor, had denied a permit to erect a fence to stop rampant and damaging trespass across Plaintiff's property.

12.

At the direction of the Mayor, a fence that had been erected by Plaintiff on Plaintiff's private property was removed by personal of the Town of Arcadia.

13.

Plaintiff's right of use of its own property is also being denied them by Defendants in violation of substantive due process as follows:

a. The Town's denial of the permit to erect a fence were intended to benefit an adjacent property owner and are not rationally related to a legitimate government objective, and constitute arbitrary and capricious governmental and private action, bad faith and conflict of interest;

b. The Town's trespass and removal of the lawfully placed fence does not further a legitimate government objective, and which constitutes further and additional arbitrary, capricious, unreasonable and bad faith action;

c. The Mayor's arbitrary actions on behalf of the Town and, as authorized and by the Council, gave rise to a violation of the Fourteenth Amendment of the United States Constitution as Plaintiff was deprived of a property right without due process;

d. The aforesaid actions are all in deprivation of Plaintiff's substantive due process, and were done in concert by all Defendants named herein;

e. Such other actions and conduct as may be shown at trial of this matter.

14.

The arbitrary and capricious conduct of Defendants has deprived and will continue to deprive the Plaintiff of its property rights and is entitled to injunctive relief prohibiting Defendants from denying the Plaintiff a permit to erect a fence or other barrier to stop the continued trespass and damage to property.

15.

In addition to the above-stated injunction under § 1983, the Plaintiff is entitled to damages including its loss of property and damage to property caused by the unconstitutional impingement of its property rights.

16.

Pursuant to § 1983, the Plaintiff is also entitled to all of its attorneys' fees associated with its attempts to obtain permits and protect its property rights, its action obtaining its permits, and in bringing this action.

COUNT 2: INVERSE CONDEMNATION

17.

Alternatively, and only in the event that this Court should conclude that the Plaintiff was not subjected to unconstitutional conditions or deprived of substantive due process under the Fourteenth Amendment of the United States Constitution by being denied its right to protect its property and block the trespass of traffic, then, and only in that event, the actions of Defendants in limiting the Plaintiff's right to erect a fence or barrier and block the trespass of traffic was a "taking" within the meaning of Article 1 § 4 of the Louisiana Constitution for which the Plaintiff is entitled to just compensation. Plaintiff is expressly not asserting a taking under the Fifth Amendment of the United States Constitution at this time.

18.

Kiran is an adjacent land owner but it does not own property abutting the public thoroughfare nor does Kiran own property abutting the road servitude. Kiran has not purchased property abutting the public thoroughfare nor has it been granted a servitude of passage.

19.

The right to deny trespass on property is a recognized and established property right under Louisiana law and the impingement of that right is compensable under Louisiana law.

20.

The arbitrary removal of a fence and the allowance of Kiran by the Mayor, the Town, and the Council to continue to allow trespass and damage over its property is a substantial limitation of the access rights granted by Louisiana law, is clearly a wrongful appropriation, and had resulted in damage to the Plaintiff as well as causing Plaintiff damage in the form of, attorneys' fees, and costs.

21.

Gap Farms as the property owner is entitled to and prays for recovery of damages as may be proven at trial through the testimony of valid and competent fact and expert valuation evidence.

22.

The Town of Arcadia has not paid any amount as compensation for the substantial limitation on Plaintiff's property rights and for the damage to Plaintiff's property by the continued trespass.

COUNT 3: REQUEST FOR PRELIMINARY INJUNCTION

23.

Gap Farms is entitled to a preliminary injunction pursuant to 42 U.S.C. § 1983 prohibiting Defendants from refusing to issue permit for the construction of a fence or barrier to stop or impede the ongoing and damaging trespass from Kiran's customers.

24.

The unconstitutional conditions and the denial of due process rights as shown in Count One, above, establish irreparable injury sufficient to support a preliminary injunction.

25.

No prejudice will be worked to the interests of the Defendants by the granting of the preliminary injunction, because there is no need for the continued trespass of traffic nor is there any justification for the continued trespass of traffic over Plaintiff's property.

26.

The injury worked to the public by denying the injunction and denying the permit is far greater than injury from granting the injunction, if any, since the trespass of traffic from the Kiran tract poses an imminent danger to the public lawfully traversing Gap Farms Road.

27.

For the reasons stated herein, Gap Farms is likely to prevail on the merits of this case and to obtain a permanent injunction in order to preclude any further damage or deprivation of its civil rights, and a preliminary injunction is required in order to preserve the status quo and prevent the immediate loss of those rights by the continuing trespass of traffic.

28.

Therefore, Gap Farms files contemporaneously with this Complaint a Motion for Preliminary Injunction as above stated.

29.

Plaintiffs request a trial by jury.

WHEREFORE, Gap Farms, L.L.C., Plaintiff herein prays:

1. That this Complaint be filed in these proceedings and citation be issued to undersigned counsel for service thereof;

2. That after due proceedings there be judgment in favor of Gap Farms, L.L.C., and against the Town of Arcadia, Arcadia Town Council, Jesse Eugene Smith, Jr., Mayor for preliminary injunction that the said Defendants are prohibited from precluding a permit to place a fence or barrier to stop the trespass of traffic from the Kiran property to Gap Farms Road;

3. That after due proceedings there be judgment converting the preliminary injunction to a permanent injunction in favor of Gap Farms, L.L.C., and against the Town of Arcadia, Arcadia Town Council, Jesse Eugene Smith, Jr., Mayor and for damages under § 1983 of Title 42 of the United States Code, together with attorneys' fees, expert fees, and costs;

4. That after due proceedings there be judgment in favor of Gap Farms, L.L.C., and against the Town of Arcadia, Arcadia Town Council, Jesse Eugene Smith, Jr., Mayor for all damages arising from Inverse Condemnation, attorney's fees, expert fees and costs; and

5. Plaintiffs request a trial by jury.

KITCHENS LAW FIRM, APLC

By: ______________________________

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VERIFICATION

BEFORE ME, the undersigned authority, personally came and appeared Danny Prince as duly authorized Member/Manager of:

GAP FARMS, L.L.C.

who, after being duly sworn, did depose and state that he has read the Complaint for Injunctive Relief and Monetary Damages, and that all of the allegations contained therein are true and correct to the best of his knowledge and belief.

[signature]
Danny Prince for Gap Farms, L.L.C.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 29 DAY
OF MARCH, 2017.

[signature]
NOTARY PUBLIC

Bert Hood # 78252
Printed Names & Notary Number

BERT HOOD NOTARY PUBLIC ID 78252 BIENVILLE PARISH, LOUISIANA